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Finding the Findings

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"... I determine it is essential to limit prior notice, and direct the Director of Central Intelligence to refrain from reporting this Finding to the Congress ..." — Document signed Jan. 17, 1986, by President Reagan.

We have all just read our first secret intelligence "Finding," released by the White House to demonstrate that naïveté rather than illegality undergirded our Iran dealings.

A dismaying sidelight to this glimpse inside the most secret workings of our Government is the revelation, in a handwritten postscript by National Security Adviser Poindexter, that the President did not even take the trouble to read the attached reasoning before signing his political death warrant.

To those interested in the ability of a future administration to undertake necessary covert action, the central question is: When should the President be required by law to take the security risk of informing Congress of secret actions?

Laws establishing Congressional oversight of intelligence activities are relatively new. The specific law requiring the now-famous Jan. 17 finding is a 1980 revision of the Hughes-Ryan Amendment of 1974, dealing with C.I.A. operations in foreign countries "other than those intended solely for the purpose of intelligence collection" — which means covert action, like Libyan bombings, hostage rescues, Grenada invasions.

That revision was the result of a deal to reduce the number of Congressmen to be informed from about 40 to what C.I.A. operatives call "the gang of eight": chairmen and ranking minority members of intelligence committees, plus leaders of both houses.

Part of the deal contained a constitutional catch: The President could keep a risky operation secret even from the gang of eight until he considered revelation "timely."

President Carter signed a finding in 1980 (in part retroactive) postponing notification to Congress of actions to free hostages in Iran that led to the disaster at Desert One, as well as the running of a C.I.A. agent into Teheran to set up the successful extrication of Americans hiding in the Canadian Embassy.

The question is now being asked: Why should any President be fearful of sharing a secret with eight, or four, or even one member of the legislative branch? Answer: It is not only the security risk, but the potential sharing of executive power, that causes Presidents to dig in their heels. If one Congressional leader, informed of what he thinks is a colossal blunder, were to threaten to blow the whistle unless the operation was aborted, the President would be considerably less of a Chief Executive.

After all the hearings are over, that issue of checking power without creating impotence in covert operations will remain to be resolved. An appeal to "comity" is a joke. As matters now stand, a C.I.A. chief is expected to lie to Congress when asked about a finding, which institutionalizes corruption.

We have a precedent that both restrains power and keeps secrets without upsetting constitutional balances. That is the foreign intelligence wiretap law; a special panel of judges is empowered immediately to review proposed eavesdropping in the national interest.

That system works; we have had neither leaks nor power abuses nor weakening of the President's ability to function. The interposition of a small, knowledgeable and impartial "covert court" may be the solution to what now appears to be a case of the President's having the power to put himself above the law. The existence of a finding, if not its content, should not be kept from Congressional leaders.

Is there one we don't know about?

The need for such adjudication may be more urgent than we think. In Mr. Reagan's six years, there have been between eight and 10 secret "findings." Under journalism's Lindley Rule, I cite no source other than my own intuition, but since the admission of the existence of the Jan. 17 finding, I suspect that the intelligence committees of Congress are now informed of all but one.

Assume, for the sake of argument, that if Congress was in the dark about the Jan. 17 finding until recently, that another finding may exist today that nobody outside the White House and C.I.A. knows about.

Assume further that this finding is of such sensitivity that it deserves to be held as tightly as possible for as long as lives are at risk. Wouldn't we all feel better knowing that the President and C.I.A. had to keep making a case to a court for not notifying even a few members of Congress? □